

In the Matter of License No. 257015 and all other Seamen Documents
Issued to: EDWIN J. COULON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1349

EDWIN J. COULON

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 26 June 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as Master and Pilot on board the United States MV CRESCENT, a ferryboat, under authority of the license above described, on 14 February 1961, Appellant operated the ferryboat on her regular route between Algiers, Louisiana and New Orleans at an excessive speed under the existing condition of dense fog.

Shortly before 0840 on 14 February 1961, the CRESCENT left Algiers headed for the Canal Street Landing at New Orleans. The Mississippi River in this area is about 2200 feet wide and there is an unpredictable eddy along the New Orleans bank. The river flows north and then turns to the east just below this ferry route which is, and has been for many years, clearly marked on the charts. The CRESCENT was sounding fog signals in dense fog, which limited the visibility to approximately 70 feet, while proceeding at one-half speed of 4 to 5 knots through the water against a downstream current of 1 1/2 knots as she angled upstream toward Canal Street. At this speed, the ferryboat could stop in between 100 and 150 feet. She is diesel-electric powered with pilothouse controls for the engines. Having no radar, the position of the ferryboat is determined in fog with considerable accuracy by whistle signal echoes. These ferryboats furnish such a necessary service that they have never stopped operating due to fog, and none of them has ever had a collision in fog. There is little passing traffic on the river when the fog is as thick as it was on the morning of 14 February 1961.

When the CRESCENT reached the middle of the river at 0843, Appellant saw the downbound motorboat SEA HAWK at a distance of about 50 feet and a second or two before she struck the CRESCENT on

the port bow. The SEA HAWK had been making between 20 and 25 knots, sounding no fog signals, and navigating solely by radar. Appellant immediately reversed the engines upon seeing the SEA HAWK. The motorboat sank. Two lives were lost and there was one survivor. The damage to the CRESCENT was minor. Appellant has been piloting on this ferry route for over 40 years not only without any record against him but with a reputation as the most skilled pilot operating on these waters.

The issue is whether the speed of the ferryboat CRESCENT was excessive under the existing circumstances and conditions. It is not alleged that her speed contributed to the collision which obviously was caused by the extremely reckless handling of the motorboat SEA HAWK. As stated before, the proper criterion in these remedial proceedings is negligence (or inattention to duty) rather than fault contributing to a casualty. (See Commandant Appeal Decisions Nos. 586, 728, 730, 868, 946, 989, 1166.)

I agree with the Examiner that the issue as to whether the CRESCENT's speed was excessive should be resolved by determining whether her speed exceeded bare steerageway (including the ability to maintain her position in order to make the Canal Street Landing) rather than being based on her stopping ability as related to the distance of visibility. The court decisions generally state that the public necessities require ferryboats to continue operating even in very thick fogs and they may navigate at bare steerageway if they proceed cautiously. The ORANGE (D.C.N.Y., 1891) 46 Fed. 408; The CITY OF LOWELL (C.C.A.2, 1907), 152 Fed. 593; Wright and Cobb Co. v. New England Navigation Co. (D.C.N.Y. 1911), 189 Fed. 809; The YOUNGSTOWN (C.C.A.2, 1930), 40 F. 2d 420. This is the only logical rule to apply in cases such as this one where the ability to maintain steerageway is inconsistent with the application of the usual rule requiring vessels in fog to be able to stop within the visible distance or half of it.

After considering the facts of this case and the opinions of two pilots, other than Appellant, who have operated ferryboats on this route for many years, I disagree with the Examiner's conclusion that the CRESCENT was moving at a speed greater than bare steerageway prior to the collision. A fair evaluation of the testimony of these two well-qualified witnesses, who testified for the Government at the hearing, and Appellant's testimony at the hearing leads to the conclusion that a speed of 5 knots through the water was essential when crossing to New Orleans in order to overcome safely the effect of the 1 1/2 knot current and to keep control of the ferryboat when encountering the eddy in the river on the New Orleans side. One of these witnesses and the former president of the company which operated the ferryboats testified that they considered 5 knots in dense fog to be a "very safe speed" on this trip across the river. The former president also stated

that very experienced pilots are required for this ferry run, Appellant is the best one of all the pilot, and he has an unsurpassed reputation for safely transporting passengers on the ferryboats.

The fact that this is a charted ferry crossing serves as a warning to others to let their presence be known in time of fog. Experience has shown, based on the absence of casualties for over 40 years and the testimony of experts, that a speed of approximately 5 knots is safe as well as necessary in fog. Taking into consideration all the circumstances, it is my opinion that Appellant was not guilty of inattention to duty but rather that he was proceeding cautiously--attentively so as to avoid danger. Since these ferryboats have to run in fog, there is no reason to hold an experienced pilot responsible when he has done his best but is the victim of a reckless navigator who took his own life.

The finding that the specification was proved is reversed. The charge and specification are dismissed.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 26 June 1961, is VACATED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 19th day of October 1962.